IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2976 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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INSURANCE INSPECTOR, ESI CORP.

Versus

HARSHADRAY RAMJIBHAI

Appearance:

1. First Appeal No. 2976 of 2001

MR MAYUR S BAROT for appellant

MR SHAKTISINH GOHIL for Respondent No. 1

MR EA MAHAPATRA for NANAVATI & NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/08/2001

ORAL JUDGEMENT

This First Appeal has been filed by the present appellant-original opponent against the judgment and order dated 27-4-2001 passed by the ESI Court, Bhavnagar

in ESI Application No.34 of 1996 whereby he has allowed the application filed by the ESI employee and directed the original opponent-ESI Corporation to pay compensation to the original applicant under the provisions of Employees' State Insurance Act (`the Act' for short).

2. Pursuant to issuance of notice on 13-7-2001, learned advocate, Mr.Shaktisinh Gohil has appeared on behalf of respondent No.1 and learned advocate, Mr.E.A.Mahapatra for Nanavati and Nanavati, appeared on behalf of respondent No.2.

3. Today this matter has come up for admission. However, at the joint request made by the learned advocates appearing for the respective parties, this First Appeal is taken up for final hearing today.

4. Heard learned advocates appearing for the respective parties at length. Also gone through the record and proceedings shown to me by them.

5. The main contention raised by the learned advocate for the appellant is that the respondent No.1-employee has met with an accident on 30-10-1987 during office hours and though he is an employee of the appellant-Corporation, he is excluded from the definition of workmen under Sec.2(9) of the ESI Act as his wages has exceeded the limit of Rs.1600/- per month on 1-10-1987 and, therefore, he will not be entitled to the financial benefit which flows from the provisions of the Act.

6. Learned advocate for the respondent No.1 has vehemently argued that the judgment and order passed by the Court below is purely on the basis of law and it is squarely covered by the judgment delivered by the Madras High Court reported in 2000(1) L.L.N.381. Drawing my attention towards the provisions of Regulation and 4 of the Employees' State Insurance General Regulations (`the Regulations' for short) and Sec.2(9) of the Act, he has argued that since regular contribution was being deducted from the salary of the employee till September, 1987, Regulation 4 of the Regulations entitles the employee to the benefit for 9 months' period from the last date of deduction of contribution. According to him, the Act is a beneficial legislation and whatever interpretation is required, the same be done looking to all aspects of the matter. Over and above, he has stated that the contention of the respondent No.2 and the appellant before the Court below that monthly income (salary) of the employee has exceeded Rs.1600/- in the month of October, 1987 is not proved by any of them by producing

documentary evidence to that effect and hence, this appeal be rejected.

7. It is not in dispute that the respondent No.1 is an employee of the respondent No.2, Mahalaxmi Textile Mills and hence there exists a relation of employee and employer between the respondent Nos.1 and 2. It is also not in dispute that as regular contribution was being deducted from the salary of respondent No.1 every month, he was covered under the Act, but admittedly said contribution was not being deducted from 1-10-1987. The facts that the accident in question has taken place on 30-10-1987 in the mill premises itself during the course of employment and his permanent disability assessed by the Board on being appeared before it to the extent of 45 per cent on the body as a whole and the compensation fixed at Rs.28/- per day were being paid by the respondent No.2 to respondent No.1 for certain period are also not disputed. However, it is transpired from the record that on 7-2-1991, i.e. after a period of four years, the respondent No.1 was informed by the respondent No.2 that since he was not covered under the Act as his salary has crossed the limit of Rs.1600/-, no further compensation would be paid to him. The respondent No.1 was also asked by the respondent No.2 to pay back the amounts which were already received by him towards compensation and hence, an application being ESI Application No.53 of 1992 was filed in the ESI Court at Bhavnagar which was renumbered as ESI Application No.34 of 1996 just to show this as a new matter, but it may be stated that it is a very old matter of the year 1991 which was finally disposed of by the Court below on 27-4-2001.

8. As stated earlier, the only point emerges for consideration by this Court in this First Appeal is whether the wage of the respondent No.1-employee exceeded Rs.1600/- per month on the date of accident so as to entitle him to the benefit of compensation or not.

9. Shri Manubhai Ambalal, the Manager of the ESI Corporation, who has been examined at Ex.24, has categorically deposed that he did not have any evidence then to prove that the salary of the employee exceeded Rs.1600/- per month in October, 1987 and he will produce the same at later stage. He has been cross-examined by the learned advocate appearing for the employee on 11-8-2000, but nothing has come out which would help the ESI Corporation. It is established from the record and proceedings that he has not produced any evidence worth the name to prove that the employee has exceeded the

salary of Rs.1600/- in the month of October, 1987.

10. On a specific question being asked to the learned advocate for the appellant that any evidence is there on record to show that the employee has exceeded the salary of Rs.1600/- per month, he has admitted that except the oral evidence of the witness of the Corporation, there is no evidence worth the name to prove the same. The second legal point raised by the learned advocate for the appellant is that the respondent No.1 is excluded from the definition of workman under Sec.2(9) of the Act as his wages exceeded the limit of Rs.1600/- on the date of accident and, therefore, he is getting protection under the Act. As discussed earlier, on this aspect, the learned advocate for the respondent No.1 has relied upon the case reported in 2000(1) L.L.N.381 wherein the it was held by the Madras High Court in para 13 as under:

> "The proviso to regulation 4 of Employees' State Insurance General Regulations clearly indicates that the contribution period shall commence from the date of employment and the corresponding benefit period shall commence on the expiry of the period of 9 months from the date of such employment. Therefore, on a plain reading of regulation 4 along with its proviso, would indicate that there can be no doubt over the outcome namely, while the contribution period is anterior, the benefit period relates to the subsequent period."

It was held in para 17 of the said judgment as under:

> "It is, however, made clear that the advantage of extended period of benefit would be available only in the case of employees who continued to be in service in the establishment who had ceased to be an employee within the meaning of the Act only due to the reason of receiving more wages than the prescribed limit. The benefit of regulation 4 will not be available to a person who retires or ceased to be an employee of the establishment for any other reason."

11. On plain reading of regulation 4 with its proviso in context to the definition of employee as envisaged under the provisions of Sec.2(9) of the Act, if it is presumed that the employee has exceeded the wage limit of Rs.1600/- per month on the date of accident, then also,

interest of the respondent No.1 is covered as per regulation 4 for a period of 9 months after exceeding the limit of Rs.1600/-.

12. In view of the above, this appeal fails on both counts, i.e. on facts as well as on law and, therefore, this appeal requires to be rejected.

13. In the result, the First Appeal is rejected. Notice is discharged.

(R.P.DHOLAKIA,J.)
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